Before The

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket 98-147
Advanced Telecommunications Capability	)	

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

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September 25, 1998

SUMMARY

The Commission seeks comments on a proposed alternative for the offering of advanced telecommunications services through a separate affiliate, free of ILEC regulations. The Commission also is seeking comments on various proposed rule changes and broadened application of § 251 to address advanced services. As a mid-size incumbent local exchange company, Cincinnati Bell Telephone Company believes that the Commission should not require separate affiliates in order for ILECs to provide advanced services free of § 251(c) obligations. The most efficient means to promote the deployment of advanced services is to eliminate as much regulation of such services as possible.

The Telecommunications Act of 1996 has created a competitive environment in the local telecommunications industry which has provided new entrants the opportunity to reach every customer using the facilities of incumbent carriers. This opportunity has been possible because of the incumbents' fundamental responsibility to ensure everyone has access to affordable telephone service. For new, advanced telecommunications capabilities, this foundation for a competitive marketplace should be sufficient and ILECs should be free to compete on the same basis as CLECs. All competitors have the same opportunity to deploy advanced data services using the existing building blocks. New entrants do not need to be given access to new advanced services equipment deployed by incumbents as all participants are now able to introduce such new services and equipment themselves.

The marketplace will determine who succeeds based on meeting customer expectations and demands, prices, value, and service. For this to occur, however, market forces must be allowed to work free of artificial influences. Constant and continual

regulation is neither necessary nor warranted. Regulation of advanced telecommunications capabilities will slow deployment and place an extraordinary financial burden on small and mid-size companies who want to make available new technologies to their customers. The Commission ought to take a hands-off approach and allow the market to succeed on its own. The Commission needs to offer forbearance, especially to small and mid-size companies, if it truly wants all Americans to have access to new advanced telecommunications services.

TABLE OF CONTENTS

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	)	
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Cincinnati Bell Telephone ("CBT"), an independent, mid-size local exchange carrier, submits these Comments in response to the Federal Communications Commission's ("Commission") August 7, 1998, Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

INTRODUCTION

In this proceeding, the Commission is seeking comments on proposed new regulations regarding the provision of advanced telecommunications capabilities and services. Cincinnati Bell Telephone agrees that the Commission should ensure that the telecommunications marketplace is conducive to investment, innovation, and meeting the needs of consumers. The Commission's objective and directive under the 1996 Act should be to promote innovation and investment by all participants in the telecommunications marketplace, not just CLECs. However, CBT believes that additional regulation by the Commission would be counterproductive to the goal of promoting investment in and deployment of advanced telecommunications capabilities.

Competitive firms are motivated to promote innovation when their own economic interests warrant such action. In order to justify investment in new technologies, the competitive firms must be able to project that they will earn a return on their investment. Attaching ILEC obligations to advanced telecommunications services dramatically reduces the incentive to invest in advanced telecommunications capabilities because incumbents are disadvantaged; that is, they would receive no benefit through innovation or differentiation since the ILEC would be required to share such economic gains with all competitors. While the option of creating a separate affiliate may be a noble effort to free ILECs of regulation so that they will invest in advanced telecommunications capabilities, the restrictions in the Commission's proposed rules make such separate affiliates onerous and uneconomical for small and mid-sized LECs.

In its zeal to insure a competitive environment for new and advanced services, the Commission must not go beyond what is required to create market opportunities. The existing competitive rules already assure that all competitors have an opportunity to obtain access to all ILEC customers, with no one competitor being able to exclude any other from a particular market. Through unbundling of the existing telephone networks, a CLEC can provide facilities-based service to any individual customer. The same approach is not necessary with respect to advanced telecommunications capabilities. Such services are generally provided by adding new technology to the existing public switched telephone network, and all competitors have the same ability to implement such added new technology. To the extent advanced services are provided by investing in new types of infrastructure, the new entrant carriers ("NECs") and others also have the same opportunity to invest in and construct this new infrastructure. Where incumbents have no

ability to restrict NECs from reaching these new markets, they must not be burdened by rules and regulations that create barriers to the deployment of new and advanced telecommunications capabilities.

The influence and control of free market forces must not be ignored, but rather should be relied upon as the most efficient means of facilitating the deployment of new technology. Where there is a real demand for a service the marketplace, not regulation, will send the correct economic signals to competitors whether or not an investment in that market is likely to generate a return. In the new world of telecommunications competition, where most of the new players are global financial giants, the Commission should, in particular, consider the heavy burdens any new regulations will have on small and mid-size companies who want to invest in and offer new advanced telecommunications capabilities and compete on the same basis in the same environment. The use of regulation to attempt to incent certain behavior invariably causes market distortions and results in resources being invested in a manner which ignores the true demands of the marketplace. Subsequently, any change to that scheme of artificial regulation will cause disruption to market expectations. Therefore, the Commission ought to minimize regulation of advanced telecommunications services. The creation of separate affiliates, special loop requirements, and application of § 251's unbundling and resale regulations are not warranted. The Commission should gear its efforts towards regulatory relief, thereby encouraging normal market forces to shape the development of advanced telecommunications capabilities.

I. SEPARATE AFFILIATES SHOULD NOT BE REQUIRED TO AVOID ILEC OBLIGATIONS

The Commission has proposed in Section VI.B, paragraphs 85 through 117, that ILECs be required to form separate affiliates in order to provision advanced services free from incumbent LEC regulation.[1] CBT supports the promotion of advanced services and regulatory freedom for such services, but disagrees that the creation of a totally separate affiliate is necessary to equalize the ability of competitors to participate in advanced service provisioning. To the contrary, the requirement of a separate affiliate would result in an inefficient use of resources, would promote economic inefficiency and would create barriers to ILEC provisioning of advanced telecommunications capabilities. Furthermore, the Commission's concept of a separate subsidiary providing advanced telecommunications capabilities in the same service area as the ILEC may be prohibited by Ohio's existing local competition guidelines. For these reasons, CBT does not support the need for a separate affiliate to avoid ILEC unbundling and resale obligations.

Inefficient Use of Existing Resources. All providers of advanced services have available to them the basic building blocks that would be used to provision advanced services. The incumbent provider of telephony has no distinct advantage in this new emerging data service market that would justify the imposition of ILEC duties. To the extent advanced telecommunications capabilities were not present in ILEC networks at the time of passage of the 1996 Act, the ILEC would need to deploy new equipment to provide advanced services. Now that they have access to UNEs existing in ILEC

[1] CBT agrees with the Commission's conclusion that a separate affiliate would not be an ILEC within the meaning of the statute and, hence, would not have ILEC duties under § 251(c). However, as stated in these comments, CBT believes that the Commission

networks, CLECs have the same opportunity to deploy these new technologies as the ILECs.

While Congress appears to have anticipated that the 1996 Act would create competition in all segments of the telecommunications business, it is abundantly clear now that CLECs have targeted the more lucrative business customers and are not choosing to serve residential customers whose existing basic rates tend to be below the cost of providing service due to universal service concerns. ILECs have not had the same ability to select their customer bases and have been required and continue to serve as the carrier of last resort for all customers. Erosion of their business customer base will leave ILECs with more and more of the residential market, reducing their overall operating income. Advanced services provide a means for the incumbent to begin to recover its full cost of provisioning service to all customers by recovering incremental margins through the pricing of discretionary services. Creating a separate affiliate would defeat this objective and would only serve to exacerbate the problem for the incumbents.

Attachment A is a hypothetical example of the current residential subsidy problem faced by ILECs compared with the opportunities available to CLECs. Today, as a general matter, basic local residential service is provided below economic cost by the incumbent as a result of public policy concerns. As indicated in the example, basic service without vertical services, such as caller ID, has a negative effect upon operating margin to the incumbent. Where customers utilize vertical services, the incumbent has an opportunity to realize a positive operating margin. It is this same sophisticated customer,

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should go even further and determine that ILECs can provide new services directly without being subject to the requirements to unbundle and resell.

who currently subscribes to certain vertical services, who is also most likely to subscribe to advanced services and would provide the incumbent with an opportunity to increase its operating margin with residential customers. If a separate affiliate must be created to take full advantage of advanced services, then the higher margin customers would tend to leave the incumbent and take service from the affiliate since the affiliate is the provider offering the desired service. The incumbent would then be left with an even higher proportion of customers who provide a negative operating margin and would have no other recourse than to increase rates in order to protect its financial health.

Attachment A also demonstrates that competitors are not disadvantaged through either a resale or facilities-based unbundled alternative under today's regulations. As would be expected, resale leaves the new entrant with a positive operating margin regardless of the actual cost of providing service because the new entrant is simply reselling the incumbent's service less the avoided cost. The unbundled alternative also provides an opportunity for the new entrant to realize a positive operating margin with customers who subscribe to vertical services and advanced services. The creation of a separate affiliate would increase the ILEC's cost, prohibit the use of labor and capital deployment synergies of the incumbent and ultimately increase the cost to the customer.

Promotes Economic Inefficiency. The Commission's proposal to require completely separate affiliates in order to avoid § 251 requirements does not result in an efficient use of resources. Paragraph 96 proposes seven requirements that such an affiliate would have to meet in order to avoid being treated as an ILEC. These requirements would increase the cost of ILECs to provide data services to the customer, costs that are not required of CLECs, such that the incumbent would not be able to price

the service competitively and the increased cost will limit the demand for the price elastic customer.

Attachment B is a hypothetical example indicating the cost of provisioning data service by an affiliate. It does not make any specific assumptions about the seven requirements but limits the cost to simply making advanced services available. The seven requirements would significantly increase cost beyond the assumption in Attachment B. Based on a recent study by Forrester Research, Inc., 16 million households will use broadband connections. Based on this level of demand, an assumed cost of provisioning broadband service of $150 and a labor requirement of one full time equivalent for every ten thousand annual installations, the cost to affiliates will be in excess of $3 billion. This cost translates into more than $17 per month per customer. With such substantial capital requirements in order to launch advanced services, the separate affiliate requirements raise serious concerns over the ability of separate affiliates to raise the billions in necessary capital, given the absence of cash flow and the prohibition on lenders having any recourse to the incumbent as outlined in paragraph 96 of the Commission's proposal. Clearly, the creation of an affiliate does not create any additional value for the customer and will stifle demand.

Disadvantages small, mid-side incumbent. In paragraph 98, the Commission seeks comment "on whether the same separation requirements should apply to all advanced services affiliates for them to be deemed not incumbent LECs, regardless of the size of the associated incumbent LECs." The answer is a resounding "No!" Clearly Congress recognized a size differential between ILECs and allowed states to provide

different treatment for smaller companies. 47 U.S.C. § 251(f). The Commission should do the same. One size clearly does not fit all.

Small and mid-size LECs already operate at a disadvantage in terms of size and scope. Not only are the RBOCs and GTE 20-40 times the size of CBT and other mid-size companies but competitors for advanced telecommunications services will be companies like MCI World Com, AT&T and Time Warner, who are global competitors that dwarf companies like CBT in size and financial resources. The Commission must recognize the tremendous burden operating through a separate affiliate would place on small and mid-size LECs who want to offer advanced telecommunications services to their customers. Establishing a new and completely separate subsidiary would be extremely expensive and defeats whatever small economy of scale or efficiency the smaller companies may have as a result of centralized operations. Separate affiliates require duplication of systems, training, personnel, etc. The planning, implementation and start up phases for a new subsidiary can take many months, not including state certification, which might be required. As indicated above, capitalization and financing costs alone may be prohibitive. The proposed separate affiliate rule does not allow for any sharing of resources. Requiring a separate subsidiary would penalize small and mid-size companies.

CBT explains in these comments why the Commission should not require separate affiliates for advanced services to not be subject to ILEC § 251 obligations. While CBT clearly opposes a separate subsidiary requirement, in the event the Commission goes forward with such a regulatory scheme, pursuant to the invitation in

paragraph 97, CBT believes the Commission should at least relax the degree of separation that the proposed rules would require:

1. The first proposed criteria would require completely independent operations. There is no legitimate reason why affiliates should not be allowed to contract with ILECs for the provision of operating, installation or maintenance functions to the affiliate. When CLECs purchase UNEs from ILECs they are essentially using the ILECs to perform these functions. So long as affiliates pay the same component costs as are used to develop rates for CLECs, they should be allowed to contract with the ILEC. To require the separate affiliate to provide these functions independently is unnecessarily duplicative and would disadvantage the affiliate in the market.

2. The second proposed criteria would require all affiliate transactions to be publicly disclosed. The current affiliate transaction rules do not require such specific and public disclosures. It should be sufficient that the companies maintain appropriate records available to inspection by the appropriate regulatory agency.

3. The fourth criteria would require completely separate officers, directors and employees. This is another unfair handicap placed on the ILEC that is not faced by CLECs, who are allowed to provide all types of services through a single company, with no distinction being made between voice, data, and other services. To require ILECs and their separate affiliates to maintain strict separation of all personnel and management requires unnecessary duplication of functions that competitors are not required to do.

4. The fifth criteria requires that creditors have no recourse against the ILEC. This unfairly inhibits the ability of the separate affiliate to raise capital. CLECs have no

restrictions on how they can secure their debt. To place such a restriction on ILEC affiliates raises the cost of capital to such affiliates, creating a competitive disadvantage.

5. The sixth criteria would prohibit all discrimination in favor of its affiliate. Footnote 191 indicates that this is based upon the provisions of § 272, which Congress indicated should only apply to RBOC affiliates when they engage in manufacturing or the provision of interLATA service. Both of these are carryovers from the AT&T consent decree. There is no basis to impose these strict separate affiliate requirements on non-RBOC companies for any purpose. This rule would, for example, prohibit the ILEC from sharing any marketing information with its affiliate and require the two companies to duplicate those functions or else share the same information with all competitors. No CLEC is under such a duty.

CBT agrees with the Commission's conclusion in paragraph 100 that an advanced services affiliate, to the extent it provides interstate exchange access service, should be presumed to be non-dominant. However, CBT does not believe the Commission's conclusion goes far enough. CBT believes that the Commission should also allow ILECs to provide advanced services without forming a separate subsidiary and still be considered non-dominant. Since advanced services would be new to an ILEC, as they would be to a CLEC, the Commission should begin with the assumption that the advanced services market is fully competitive and, only upon clear evidence to the contrary, should direct provisioning of advanced services by an ILEC be subject to federal price regulation and tariffing.

In paragraph 101, the Commission seeks comment on whether an advanced services affiliate should be limited in its ability to resell ILEC services or to purchase

UNEs. There is no apparent basis for any such restrictions. CLECs have the capability of doing business in this manner and, to have balanced competition, the ILEC affiliate should have the same rights. Otherwise, the market would be skewed in favor of the CLEC and against the ILEC affiliate. Further, CBT sees no unfair advantage to ILEC affiliates using virtual collocation. Virtual collocation is available to CLECs as well, so again, the parties would be on an equal competitive footing.

In response to paragraph 102, CBT does not believe that the Commission should prohibit advanced services affiliates from favoring ILEC information services providers. The market will dictate the level of access to alternative information service providers that will be necessary in order to sell advanced services. If ILEC affiliates restrict to whom customers can connect, they risk limiting the size of their market share. Those advanced services providers who provide the widest access to information service providers will be the most attractive to end users. If ILECs limit service provider availability, CLECs could offer a wider choice and gain a market advantage. This is just one example of where the Commission should refrain from regulating and allow the laws of supply and demand to work. Clearly, the provider with the most attractive product for the customer will prevail.

In response to paragraph 103, CBT does not believe there should be anticompetitive concerns with respect to ILECs offering services on an integrated basis. The whole basis upon which the Commission's separate affiliate rules are premised is that ILECs would have to comply with unbundling and resale obligations absent a separate affiliate. CBT disagrees with this basic premise. The statutory definition of an ILEC refers to a carrier that provided "telephone exchange service" in a given area on the

date of enactment of the 1996 Act. Advanced services are not "telephone exchange service" nor were they being provided on the date of enactment of the 1996 Act. The Commission could clearly construe the definition of an ILEC to be limited to its capacity in providing "telephone exchange service" and not apply to the subsequent provision of advanced services.

Further, the Commission has the power under § 251(d)(2) to determine what network elements need to be unbundled. One of the criteria is whether the failure to provide access to a given network element would impair the ability of competitors to provide service. As has been noted herein, CLECs have the ability to provide advanced services without unbundling of newly installed equipment used to provide advanced services because the CLEC has the same ability to deploy the additional equipment necessary to use the existing telephone network for provision of advanced services.

Similarly, there is no need for resale of advanced services. This fundamental fact is not changed by whether the ILEC provisions such services directly or does so through a separate advanced services affiliate. The Commission appears to acknowledge that CLECs are not competitively disadvantaged by separate advanced services affiliates being exempt from requirements to unbundle or resell. Therefore, the Commission should also agree that the CLECs are not disadvantaged by the ILEC deploying advanced services directly, so long as the CLEC has a similar opportunity to provide those services. The degree of separateness of the ILEC affiliate has no bearing upon whether the CLEC has that ability. The Commission ought to allow ILECs to provide advanced services without being subject to ILEC obligations and without having to form separate subsidiaries.

II. TRANSACTIONS BETWEEN ILECS AND AFFILIATES

In paragraphs 104 et seq., the Commission indicates its intention to treat affiliates as ILECs when they engage in certain types of transactions. As a general rule, transactions between ILECs and their advanced services affiliates should not be treated as "assignments." The Commission is apparently interpreting the language of § 251(h)(1)(iii) to mean that transfers of property to affiliates render the affiliate an "assign" and, hence, they would become ILECs for regulatory purposes. This interpretation is far too broad and is not consistent with the purpose of the definition.

Section 251(h) defines ILEC to mean the local exchange carrier that provided telephone exchange service in a given area or the entity that afterwards became a successor or assign of the ILEC. The apparent purpose of this provision was to account for sales, mergers and consolidations where the identity of the carrier that provided telephone exchange service on the date of enactment of the 1996 Act in a given area might change. However, there is no indication that transactions with an ILEC that continues in the business of providing telephone exchange access in the area would render the other company an ILEC as well. So long as the ILEC continues to provide telephone exchange access in the area as it did on the date of enactment, it should continue to be the only service provider that is deemed an ILEC. Mere transfers of property, personnel, or other assets to an affiliate should not make that affiliate an ILEC when the ILEC continues providing telephone exchange service. This is particularly the case where the new affiliate is providing advanced services, not telephone exchange service.

With respect to paragraph 105, CBT agrees that an affiliate should not be deemed an assign of the ILEC when it acquires facilities on its own. However, the Commission should go even farther. An affiliated entity should not be deemed an assign of the ILEC, for purposes of the ILEC definition, if the property assigned neither existed nor was used to provide telephone exchange services, on the date of enactment of the Act. The theory of treating an assign as an ILEC is that the facilities used to provide telephone exchange service on the date of enactment of the Act should continue to bear ILEC obligations. However, where facilities were not in place at that time, they should be exempt from those obligations, especially when those facilities are not used to provide telephone exchange service.

CBT disagrees with the Commission's conclusion in paragraph 106 that transfers of existing ILEC DSLAMs, packet switches, and related facilities used to provide advanced services to ILEC affiliates render those affiliates assigns of ILECs. A distinction should be made between equipment that existed at the time of enactment of the 1996 Act and which was used to provide telephone exchange service and equipment that was purchased and/or installed at a later date or which is not used to provide telephone exchange service. The Commission's proposed rule would defeat the purpose of creating a new affiliate to avoid ILEC obligations. ILECs would be left with investments in DSLAMs, packet switches and other equipment, which could not be used by either the ILEC or its affiliate without being subject to § 251. This is contrary to the Commission's charge in § 706 of the Act to facilitate the deployment of advanced telecommunications capabilities. The Commission should instead give ILECs every incentive to deploy all of their existing equipment, which should include exempting

transfers to affiliates from assignment rules and allowing ILECs to deploy such equipment directly without unbundling or resale obligations.

In response to paragraph 108, CBT believes that there should not only be a *de minimis* exception to transfers of equipment, but that all transfers of advanced services equipment be exempted from ILEC regulation. Particularly to the extent that an ILEC invested in such equipment without knowing that the Commission would consider it to be subject to unbundling and resale obligations, it would be unfair to prohibit the transfer of that equipment to the separate affiliate without being encumbered by the same regulatory obligations. ILECs should be allowed to transfer both equipment that has been ordered and equipment that has been installed.

In response to paragraph 109, CBT opposes a time limit on such transfers. ILECs need to have sufficient time to develop business plans to determine whether and how they would set up separate affiliates. In addition, there may be state regulatory hurdles to cross, which might not be accomplished within a six-month deadline. Further, there is no reason to distinguish between equipment acquired before this NPRM, as opposed to the effective date of any rules adopted in this proceeding, because no one can know what the final rules will be at this time. Any equipment acquired prior to the effective date of any final rules should be freely transferable to an affiliate without ILEC obligations attaching to the affiliate.

CBT agrees that transfers to affiliates should be exempt from non-discrimination requirements, as proposed in paragraph 111. There should not be a specific time limit on such transfers, so long as the equipment transferred was ordered or installed prior to the effective date of the rules established in this proceeding.

CBT also believes that equipment used by ILECs for trial purposes should be freely transferable to affiliates (paragraph 112). Equipment that has only been subject to a trial has generally not been used in provision of telephone exchange service and would not have been unbundled to competitors. As the ILEC did not use this for "ILEC purposes" it should not carry ILEC obligations with it when transferred to an affiliate. Furthermore, the Commission's separate affiliate rules limit the practical ability of the affiliate to engage in equipment trials due to limited scale and scope. The affiliate should be allowed to use the ILEC for testing purposes so that the affiliate does not have to duplicate technical capabilities that may already be present at the ILEC. This would not give the affiliate an unfair advantage because CLECs have no rules requiring them to separately manage their telephone exchange services and advanced services and can test equipment more efficiently than ILEC affiliates.

In response to paragraph 113, CBT reiterates that it believes the proposed separate subsidiary requirements are far too strict. Thus, CBT believes that ILECs ought to be able to perform the same functions internally that a separate subsidiary would perform without having the ILEC obligations attach to the provision of advanced services. In any event, if the Commission does go forward with its separate subsidiary rules, any kind of transfer to the affiliate should be permitted so long as the ILEC retains the business of providing telephone exchange service, which, by definition, is what makes it the ILEC. Certainly the transfer of employees should be allowed as the rules would require separate employees and the most likely source of hiring for the affiliate would be personnel that are already known and who have the technical and managerial abilities to operate the business. Similarly, brand names should be transferable. CLECs are allowed to provide

local, long distance, Internet, advanced services and any other kind of service they wish under the same brand name. ILECs should have the same ability. The ILEC affiliate should be permitted to use the same brand names as the ILEC itself uses. Transfers of funds from the ILEC's corporate parent should be freely permitted without any ILEC obligations attaching. For a separate affiliate to be formed and funded, the operating capital would almost necessarily come from the corporate parent. To disallow this as a source of funding would make it nearly impossible to run a business successfully.

The Commission should not limit such transfers to *de minimis* amounts as suggested in paragraph 115. The fundamental basis for regulating ILECs differently than other companies is that they enjoyed ownership of ubiquitous networks, which arguably created bottlenecks to reaching end users. So long as the functions necessary to provide essential telephone exchange service business remain with the ILEC and are subject to ILEC § 251 obligations, nothing else the ILEC transfers to its affiliate should carry with it ILEC obligations.

State Regulation. In paragraph 116, with respect to intrastate services, the Commission encourages states to treat advanced services affiliates the same as CLECs. CBT agrees that states should allow ILECs to have separate affiliates that would be treated like CLECs. However, in Ohio, an ILEC may be prohibited from creating such an affiliate by state regulations. The Public Utilities Commission of Ohio has adopted local competition guidelines governing the way incumbents are to conduct their business in a competitive environment. See Case No. 95-845-TP-COI, Opinion and Order, dated June 12, 1996. Section II.A.4 of those guidelines states in pertinent part:

> ILECs cannot establish NEC affiliates within their current serving area in order to offer basic local exchange service. A separate ILEC-affiliated NEC may be established to compete in other ILEC serving areas.

Thus, incumbents within the state of Ohio may be prohibited from creating the separate affiliates envisioned by the Commission for the provision of advanced services in their existing territory. It would be inappropriate for CBT to be foreclosed from the opportunity to provide advanced services without ILEC unbundling and resale obligations where state law prohibits the use of a separate subsidiary to do so. The Commission should, instead, devise rules that do not require separate subsidiaries for the provision of advanced services. Otherwise, this would require the Commission to preempt the PUCO's local competition guidelines.

In paragraph 117, the Commission expresses concern that, if advanced services affiliates also provide circuit-switched voice services, ILEC's may allow their existing networks to degrade. CBT does not believe this is a valid concern because a quality network would still be necessary for the affiliate to provide advanced services. Nevertheless, if the Commission truly believes this is concern, CBT would suggest this is a strong reason why separate subsidiaries should not be required in order to avoid ILEC obligations with respect to advanced services. If the ILEC could provide advanced services directly, it would have no reason to form a separate subsidiary and there would be no danger that the ILEC network would be neglected.

III. ADDITIONAL COLLOCATION RULES ARE NOT NECESSARY

In the present proceeding, the Commission addressed collocation as one of the measures to promote competition in the local market. In addressing collocation, the

Commission identified a number of areas in which it either reached tentative conclusions, sought comment or both.

The Commission sought comment in paragraph 123 on whether it should establish additional national rules for collocation in order to remove barriers to entry and speed the deployment of advanced services. The Commission first established rules requiring incumbent LECs, including CBT, to permit collocation for special access and switched transport transmission facilities in the Expanded Interconnection proceeding.[2] The Commission further refined those rules in the Local Competition proceeding,[3] requiring incumbent LECs to provide for the physical collocation of equipment for interconnection and access to UNEs. The rules were established as minimum requirements and the individual states were permitted the flexibility to adopt additional requirements. Many states have exercised this option and have established additional requirements.

Further national rules for collocation are unnecessary, would increase cost to the customer, and would be burdensome for a mid-size independent telephone company like CBT. The burden of additional national rules would require significantly more administrative effort on behalf of CBT and would cause additional costs. Those costs would rightly have to be recovered from the CLECs who seek collocation from CBT and would offset much, if not all, of any benefit to the CLECs seeking collocation. CBT has not experienced any of the collocation difficulties the Commission identifies in this NPRM and resists imposition of further unnecessary rules. If problems occur within a

[2] CC Docket No. 91-141, First Report and Order, adopted September 17, 1992, released October 19, 1992.
[3] CC Docket No. 96-98, Memorandum Opinion and Order, adopted August 1, 1996, released August 8, 1996.

particular state or with a particular incumbent LEC, the State Commissions are equipped to decide complaints or establish additional rules on collocation. The States have been granted the duty of mediating and arbitrating interconnection negotiations between incumbent LECs and new entrants and are better equipped to deal with complaints promptly, while taking into account the actions and the reasonableness of both parties.

Beginning at paragraph 129, the Commission discusses the types of equipment that may be collocated. In the Local Competition Order, the Commission concluded that new entrants may collocate transmission equipment including optical terminating equipment and multiplexers. The Commission also correctly concluded that incumbent LECs need not permit collocation of switching equipment and equipment used to provide enhanced services. CBT sees no changes in equipment design that should change those conclusions. Interconnection of networks between incumbent LECs and new entrant LECs certainly doesn't require the collocation of switching equipment and neither does access to UNEs, one of which is, in fact, local switching. Collocation of switching equipment should not be necessary to provision advanced services either. CBT agrees with the Commission's conclusion that incumbent LECs should permit competing carriers to collocate the same type of equipment that may be collocated by an affiliate. However, CBT does not foresee the need for any affiliate to collocate any equipment that a CLEC could not collocate today.

In response to paragraph 130, the Commission should not change its conclusions in the Local Competition Order that switching equipment may not be collocated. In concert with that conclusion, the Commission must also limit abuses by new entrant LECs who attempt to circumvent the current rules by collocating equipment whose

primary function is switching but which may have a small component that could be considered transmission equipment, such as a remote switching module. Further, because technologies are evolving, the Commission should not permit one type of switching equipment, such as packet-switching equipment, to be collocated while restricting another type, such as circuit-switching equipment, from being collocated. Incumbent LECs should not be required to collocate either type of switch. Permitting one type and excluding another will only give further incentive to those who seek to circumvent the standards by utilizing such equipment differently than envisioned by the Commission today.

CBT agrees with the Commission's conclusion in paragraph 132 that it should not require the collocation of enhanced services equipment. The proliferation of enhanced service providers alone provides enough evidence that the Commission's conclusion is sound. Space in incumbent LEC offices would be quickly exhausted by enhanced services equipment. That is, space available for collocation of equipment for telecommunications services (such as advanced telecommunications capabilities), equipment to access UNEs, or incumbent LEC equipment additions, would be scarce because of this competition with enhanced services equipment. Providers of enhanced services should house their equipment on their own premises as it is very easy for them to transport traffic to any location of their choice where they can independently provide whatever amount of space they need.

In response to paragraph 133, CBT does not believe the Commission needs to issue any additional rules to deal with ILECs that do not allow cross-connects between collocating carriers. CBT has allowed this practice and has not encountered any

problems. The appropriate remedy for CLECs who have not been allowed to do so would be to bring a complaint to enforce the existing rules. ILECs who have complied with the rules should not face additional rules because of the few ILECs who have not.

CBT agrees with the Commission's tentative conclusion that an incumbent LEC may require all equipment a new entrant places on its premises to meet safety standards, such as the Bellcore Network Equipment and Building Specifications (NEBS) requirements (paragraph 134). CBT also agrees with the Commission's conclusion that, insofar as incumbent LECs use equipment that does not meet such standards, competitive LECs should be permitted to collocate the same equipment. However, the tentative conclusion that incumbent LECs should be required to list all approved equipment and all equipment they use is unnecessarily burdensome on a mid-sized independent LEC such as CBT. CBT, like any other new entrant LEC, has no control over what equipment meets NEBS standards. Unless, the incumbent LEC utilizes equipment that does not meet NEBS requirements, providing a list of all the equipment they use would be redundant and unnecessary. At best, from a practical perspective, the incumbent LECs and the new entrant LEC should provide each other with a list of equipment they use which is non-compliant with NEBS.

While the Commission's effort to minimize the collocation space needed by each competing provider in order to promote the deployment of advanced services is a worthy cause (paragraph 137), CBT believes such effort is misdirected. It has been CBT's experience that carrier's have not shown any inclination to minimize collocation space. In fact, most collocators either insist on space beyond their short-term needs or they want to ensure that sufficient adjacent space is available for future expansions and request the

right of first refusal for such space. The cost of floor space is not high enough for a minimum of 100 square feet of floor space to be a deterrent to collocation. HVAC, equipment power, cross-connect and security requirements for both the collocator's equipment and the incumbent LEC's equipment are much more substantial and do not significantly vary with the reduction of floor space.

Cageless collocation presents a security dilemma. The security of the incumbent LEC as well as all of the collocating carriers is at risk. The Commission inquires whether escorts for competitive technicians, concealed security cameras and computerized badge tracking systems are sufficient protection (paragraph 141). From the perspective of identifying the party guilty of a security breach, such as sabotage, security cameras and computerized tracking system may perform flawlessly, but are not preventive measures. In any event, these devices would be costly, would have to be maintained, and personnel would have to be devoted to monitoring those systems. These costs would likely offset the savings from eliminating cages. Escorts would serve as a deterrent, but new entrant LECs have resisted paying for an ILEC technician to perform such services, and this also takes the ILEC technician away from his normal duties. This also leads to higher costs for the incumbent LEC as such normal duties may then have to be performed on an overtime basis.

Collocation, the advent of local competition, the proliferation of new entrant LECs and the development of advanced telecommunications services are all relatively new, and the problems and all the security concerns have yet to be identified. As a practical matter, it seems prudent to err on the side of conservatism until sufficient experience is gained. The security of the new entrant LECs is at risk and the new entrant

LECs should be as concerned about their risk and security as incumbent LECs are concerned about their risk and security. The security of collocation cages is the most practical solution to the security concerns of all parties.

Space preparation and construction times are, indeed, variable and dependent on location (paragraph 142). It has been CBT's experience that building permits, which must include the appropriate construction drawings and require approval of government entities, must be obtained before any construction can be started. Addition of equipment that overextends the limits of HVAC equipment can put an entire building full of equipment, and several thousand customers, at risk of service failure. Supplementation of HVAC equipment takes time. Running a power cable to a piece of equipment is a fairly simple task, although one that requires some time for supply and installation. However, installation of an additional equipment rack in a location that requires construction of a new power plant requires several months lead time. A national standard established by the Commission, which does not account for such timing differences would create as many additional problems as it would resolve.

It would be unreasonable for the incumbent LEC to be required to fund market entry for new entrant LECs as well as requiring the ILEC to recover the cost of space preparation only as competing providers occupy portions of that space (paragraph 143). CBT's experience is that the new entrants' forecasts of space requirements are unreliable and continually change. CBT has experienced several carriers that have shown interest in collocation, proceed up to the point just prior to the start of construction, change their minds and then weeks or months later revive their interest and want construction completed in time frames that are much shorter than previously agreed. CBT's policy is

that the first carrier to collocate bears the cost of space preparation. That carrier is then reimbursed pro rata as additional collocators utilize the space that was prepared. This policy is fair and equitable to the new entrant LECs as well as to CBT.

The Commission seeks comment on how to address delays between the ordering and the provisioning of collocation space (paragraph 144). It has been CBT's experience that an interconnection agreement can be negotiated before a CLEC has received state certification, but will not be final until it is signed by both parties and has state commission review and approval and the CLEC is certified by the state. If the new entrant LEC does not have the foresight to pursue state certification while conducting interconnection negotiations as a parallel process, then collocation could be delayed. The new entrant LEC, not the incumbent LEC, must take responsibility for such delays. CBT's experience, at least in Ohio, is that certification of a new entrant LEC is not a given, as the Public Utility Commission of Ohio has suspended and denied several applications. Therefore, until the CLEC has signed an interconnection agreement and received certification from the state commission, the ILEC has no assurance that a collocation arrangement will ever come to fruition and should not be required to expend resources building out collocation space for a carrier that may never be entitled to occupy that space. Additionally, if the CLEC has not paid for the full cost of space preparation in advance, the ILEC is forced to incur expenses that it may never be able to recover.

At this point, CBT has not experienced problems with space exhaustion (paragraph 145). However, in Ohio, the PUCO's local competition guidelines require the state commission to arbitrate situations where the ILEC denies physical collocation due to lack of space. A CLEC tour of the premises (paragraph 146), in addition to the

commission review, serves no useful purpose. The administrative burden on the ILEC to prepare and update a report indicating available space, the number of collocators, and the modifications in the space since the last report for each requested premises (paragraph 147) is unnecessary. CBT believes that the state commission, in its role as arbitrator, is closer to the situation and is the appropriate body to resolve all disputes and to determine what additional actions are necessary, if any. There is nothing in the record to indicate that the states are not able to resolve collocation disputes, and therefore, no new requirements for tours or new reports exist.

In paragraph 149, the Commission suggests that CLECs be allowed to use virtual collocation to the same extent that an advanced services affiliate does so. While CBT does not disagree with this conclusion, it again highlights the lack of necessity for a separate affiliate to provide advanced services. If virtual collocation of advanced services equipment is available to CLECs, they can have installed the same equipment that the ILEC uses for provisioning advanced services, without the need to install physical collocation facilities. If virtual collocation is available to all CLECs, there is no reason why an ILEC should have to form a separate affiliate and then provide virtual collocation to the separate affiliate when the ILEC could have provisioned the same equipment directly.

IV. NATIONAL STANDARDS ARE NOT REQUIRED FOR LOCAL LOOPS

In its Overview for Section VI(c)(2), the Commission expresses concern that its existing rules applicable to the unbundling of loops do not adequately provide the availability of “last mile” facilities to competitive providers. In paragraphs 154-156, the Commission asks if national standards should be established for local loops which would

serve to speed the deployment of advanced services. CBT cautions against the establishment of any uniform standards for local loops in the short term until the market dynamics of an industry propelling itself toward a "data-centric" environment can be defined. Even then, a regulatory standard may not be appropriate in an industry marked by such rapid change.

In a nonregulated industry, the marketplace typically drives standardization efforts for networks, technologies, products and services. National and international standards generally define the parameters in which components of technology, services, protocols, etc. will co-mingle. In a market driven industry, however, all companies, not only ILECs, make business decisions that incorporate some standards while not incorporating others. This is logical and appropriate inasmuch as no two companies are alike in terms of their markets, product portfolios and business strategies. For example, no single telecommunications company conforms with every ruling and recommendation established in the Ordering and Billing Forum. OBF standards were developed for the industry but must be individually applied.

Certain standards do promote efficiency. For example, the equipment standards integral to FCC Part 68 rules provide for an effective industry medium with which to build equipment interfaces. On the other hand, retroactive standards applied to embedded telephone company networks could have consequences that actually hinder competition. For example, a standard calling for a customer loop with no loads would have various negative consequences for a telephone company that has load coils in some of its loops. Costs of removal of load coils on a case-by-case basis must be charged to the cost causer. A requirement to remove all loads in a network prior to demand-generated activity

would: (1) interfere with the ability of other network components to operate, and (2) greatly increase costs which would have to be attributed to the loop cost, thereby, impeding competition.

Another example is a current Ohio state requirement that all loops must be capable of transmitting a 9600-baud signal. The ability to transmit a 9600-baud signal is as much an issue with the quality of the CPE used to generate and receive the signal as it is of the network to transmit it. CBT has encountered numerous instances of customers who connected inferior customer premises equipment to CBT's network and then complained that it would not work. CBT personnel, in response, would dispatch and place other CPE of higher quality on the network and transmit with no problem whatsoever.

CBT contends that, before the Commission should even consider the possibility of establishing any kind of loop standard, that a relationship between the current national loop makeup and real barriers to entry must be proven. CBT can cite no instance in its operating area where the makeup of its loops has been a barrier to competitive entry. CBT, in its existing interconnection agreements, has made provisions to provide various types of loops in response to CLEC demand. Specific requirements may differ from CLEC to CLEC, therefore, CBT suggests the Commission leave this to the negotiation process between the parties, a process which is currently working well.

CBT understands the critical nature of access to loops in order to provide all telecommunications services. CBT has made a good faith effort in its interconnection negotiations to provide CLECs with access to unbundled loops which suit the specific needs of CBT's interconnectors. Further, CBT has already taken steps to provide

conditioned loops for the deployment of advanced services by CLECs. This includes the removal of load coils and other loop conditioning which would serve to lower dB loss and improve the quality of the loop. CBT has also devised a procedure that provides an alternate path if the requested loop is provisioned on integrated DLC. The requesting carrier, as previously determined by the Commission, must bear the cost of loop conditioning.[4]

V. NO CHANGES ARE NEEDED FOR ACCESS TO OPERATIONS SUPPORT SYSTEMS

The Commission seeks comment whether existing operations support system rules adequately ensure that competitive LECs have access to necessary information required to provision xDSL loops. In paragraph 157, the Commission asserts that the competitive LECs need information such as whether the loops pass through remote terminals and what kind of conditioning is on the loop. The conclusion drawn is that competitors must have the ability to make their own assessments that the loop will support the technology. CBT disagrees with this conclusion. CLECs have established interconnection agreements with CBT that include loops which support advanced telecommunications services. Specifically, CBT provides an HDSL compatible loop. When this loop is provisioned for the CLEC, it is engineered to support the HDSL service, and the technology which supports it. Similarly, if a CLEC negotiated with CBT for ADSL compatible loops, these would be provisioned in a similar manner. For each loop type made available, a set of service metrics (continuity, loss, and technology

[4] First Report and Order, paragraph 382.

compatibility) is established. Therefore, access to OSS functionality is not a requirement to assure that a loop will be provisioned to match the CLEC client's needs.

The Commission seeks comment in paragraph 158 as to the type of loop inventory information available to ILECs. While it would be nice to have real time access to loop makeup information, historically ILECs have never had a need to maintain this information in readily accessible formats. In most cases, determination of loop makeup requires a review of paper engineering records or a field inspection of the particular facility. ILECs do not have electronic access to this information about their own networks and it would be impossible to provide CLECs with electronic access. CBT has agreed to provision HDSL-compatible loops on the same terms and within the same intervals as it does for its own retail customers. This satisfies the statutory requirement that it not discriminate against competitors and that it provide parity of service. For the Commission to impose additional requirements beyond that would require huge investments in time, money and new systems to track this information.

VI. LOOP SPECTRUM MANAGEMENT

In paragraphs 159-162, the Commission seeks comment on the issue of loop spectrum management. The Commission's concerns seem to be directed at two different issues: 1) spectrum interference; and 2) access to and sharing of spectrum on an xDSL loop. Regarding spectrum interference, CBT shares the Commission's concern that technology deployed on a specific pair of wires within a binder group can, and most likely will, generate noise (e.g. crosstalk) in other pairs in that same binder group. Two conditions will exacerbate this problem. First, CBT, and other telephone companies do not have ready cross-reference mechanisms which relate services to loops to binder

groups. Therefore, isolation of interference problems may be difficult. Further, and more importantly, CLECs are not currently required to disclose information regarding exactly how they are utilizing loops nor the technologies applied. When CBT provides an xDSL compatible loop, it will take safeguards when provisioning and inventorying the loop to guard against interference. However, there are no regulations that prohibit a CLEC from using a generic 2-wire or 4-wire loop to provide an xDSL service and not informing the incumbent LEC provider.

There is no reliable way to predict in advance that a given use of a loop will generate crosstalk. It is expected that this condition would come to the attention of the parties through customer complaints. The legitimacy of these complaints can then be verified by testing. CBT has taken steps to protect itself from this type of interference, but can do so only in a reactive mode due to the constraints outlined above. CBT negotiates into its interconnection contracts, language that allows CBT to disconnect a loop if it is determined that the loop is causing interference or other network harm. This is one of the few tools that can be employed at this time to minimize network problems. CBT would support regulations that would require confidential disclosure by CLECs to the ILEC of information regarding services and technologies deployed on each order for an unbundled loop.

In paragraph 161, the Commission seeks comments on whether it should grandfather existing technology in the event it adopts new national standards on spectrum management. CBT supports the concept that the new user takes the network as it finds it and must tolerate any interference generated by existing usage. Conversely, if the new user creates interference with existing users that did not exist theretofore, the new user

must defer to the existing usage and conform its usage of the network so as not to cause interference. Once it is determined what is causing the interference, the most recently added service would be the one that must be removed or altered to eliminate the interference.

With regard to access and spectrum sharing of an ADSL compatible loop, in paragraph 162 the Commission seeks comment on whether two different service providers should be allowed to have access to offer services over the same loop utilizing different frequencies. CBT believes only one service provider should provide service over a single loop. The potential management problems with two carriers using the same loop are significant. In any event, there is no evidence that a substantial number of customers would want two separate carriers to provide service over the same loop. It is likely that a customer who would obtain advanced services from a carrier would also obtain basic voice grade service from the same carrier. Thus, the problem of dividing the spectrum may be more of a theoretical issue than one that would frequently arise. If two carriers were going to share a single loop, one or the other would have to be responsible for installing and maintaining the electronics on both ends of the loop that allow spectrum division. Most likely, the carrier providing the advanced services would be responsible for this. However, assuming the CLEC is the party that installs the electronics, it would need the loop to be delivered to its collocation area, where it would attach the DSLAM to the loop, and would redeliver the voice signal from the loop to the ILEC. The ILEC would lose control over the loop and any problems with the voice grade service could be caused by the CLEC or arise in the collocation area where only the CLEC had access.

This could prevent the ILEC from providing appropriate maintenance and repair work for the customer.

There are also economic reasons not to require sharing of a single loop. For example, CBT regards xDSL service as a value-added feature on a POTS or Centrex line. The existing regulations correctly do not allow for the uncoupling of a feature from the line to be resold apart from the line. The intent here was to preclude the arbitrage that would result from competitors seeking to resell only high value features and not the baseline product, the access line. Considering the matter with regard to unbundled loops, CBT views the lessor of the loop as the entity having sole access to, and use of the loop, and its entire spectrum, for the provision of services. Commission regulations currently prohibit CLECs from leasing unbundled loops solely for purposes of providing interstate access services. The party leasing the loop must also provide local exchange service to that customer. Similar to access services, CBT views the sale of an unbundled loop to a CLEC as a network service which can only be further resold to an end user customer. If the CLEC wishes to place electronics on the loop to provide spectrum for multiple services that it, alone, may provide to its end-user customer, then CBT views this as appropriate. However, CBT sees little business sense or economic benefit to an end user customer for multiple providers to provide multiple services over a single loop.

This issue also highlights problems created by the proposed separate affiliate rules. For an ILEC to have a separate affiliate provide advanced services would require either that the ILEC engage in spectrum splitting with its affiliate or that the separate affiliate purchase the unbundled loop from the ILEC and also provide the other necessary UNEs to provision local exchange service. As a practical matter, the affiliate could not

obtain voice service through resale because the ILEC would then have complete control over the facilities and the affiliate could not obtain physical access to the loop to provision the advanced services. Thus, the most logical way for an ILEC to provide advanced services is for it to do so directly and to place the advanced services equipment on the local loop. Competitors would have the same opportunity to do so by buying the unbundled loop and adding the advanced services facilities themselves.

VII. NO NATIONAL CENTRAL OFFICE STANDARDS ARE NEEDED

In paragraph 163, the Commission states that "each incumbent LEC sets its own requirements for the central office equipment, and each has its own processes for certifying equipment before it can be connected to loop plant." CBT supports this standard and has adopted practices and procedures which fit with CBT's overall business plans and strategies. The Commission then states that this process increases new entrants' costs and time to market and, apparently, assumes that the reader will take this statement as an axiom. The Commission then states that a "simple set of national requirements would reduce new entrants' costs, speed their time to market, and reduce confusion." CBT disagrees.

The Commission seeks comment on what the set of national standards should contain. CBT takes strong exception to the positions that the Commission takes in these statements and, indeed, challenges their validity. CBT believes the existing negotiation process appropriately balances the interests of new entrants and ILECs alike. CBT currently has interconnection/resale agreements with 12 providers and others continue to be negotiated. CBT cannot cite a single instance where a policy or procedure that it has implemented regarding its central office equipment requirements and certification has

impeded in any way, successful negotiation and service rollout to CBT's CLEC customers. Further, there is no record in any arbitration proceeding nor in any complaint to any commission regarding CBT's practices as a hindrance to competitive entry. Before moving forward on any discussion regarding national central office equipment standards, CBT does not believe that a complete record will reflect that statements, presented as fact in the NPRM, are indeed valid and with merit. CBT's current practices do not in any way impede or do harm to any CLEC intention to deploy services in CBT's operating area. Further, CBT contends that the artificial application of an arbitrary set of rules defining central office equipment requirements and guidelines not only would drive up CBT's costs, but would hinder its ability to make sound network decisions that best fit the plan and strategy of CBT as an independent business. In addition, many states have minimum service standards which vary from state-to-state. Establishing national standards may conflict with many states existing standards and for certain will drive up costs to all customers.

In paragraphs 169-172, the Commission seeks comment on the technical issues that arise when local loops pass through digital loop carriers. Presently, xDSL technologies require a complete copper path from the DSLAM to the customer premises. Where a given loop is partially provisioned using DLC technology, xDSL cannot be provisioned on that loop. The simplest alternative to this problem is to reroute the feeder portion of that loop onto a copper feeder facility where available. This, however, presents a serious problem with respect to establishing the cost of unbundled loops. While the Eighth Circuit's decision in Iowa Utilities Board v. FCC determined that the Commission did not have jurisdiction to establish the pricing methodology for UNEs, in

fact, most states have adopted the TELRIC methodology advocated by the Commission. This theory requires the ILEC to develop loop costs based upon the most efficient forward-looking technology. With certain loop lengths, DLC would be the most efficient forward-looking technology and it is frequently the method by which loops are actually provisioned. Under the TELRIC methodology, the cost of copper feeder facilities, even if actually present in the network, is not to be considered in developing a loop price. However, where advanced services such as xDSL are to be provisioned, it may turn out that the copper feeder is necessary in order to provision the service. ILECs must be allowed to recover the cost of the copper feeder if they will be expected to use it to accommodate requests for conditioned loops. However, there is a direct tension between TELRIC pricing rules and the requirement to provide conditioned loops. The Commission should provide the states with guidance on how to resolve this dilemma.

The Commission seeks comment in paragraph 172 on whether a specified standard interval should be established for the provision of xDSL compatible loops and asks what that interval should be. CBT believes that it is appropriate and within the spirit of the act to provide the same interval to a competitor that it would provide for itself for a similar loop. However, CBT disagrees that it would be proper for the Commission to establish a specific interval for the provision of such a loop. Telecommunications companies' networks are vastly different from each other in terms of their loop composition. Due to geographic and demographic differences, some telecommunications companies may have a much greater percentage of their loops that must be conditioned than others. Establishing an arbitrary interval will certainly advantage some LECs while disadvantaging others. Even within the same network, some loops will be easy to

condition and others may require special construction that could take a significant amount of time to complete. Each case presents a unique situation. CBT believes that parity and non-discrimination is the key. The rules currently in place and contract negotiation procedures are adequate to address this issue without the need for further intervention by the Commission.

VIII. SUB-LOOP UNBUNDLING

In paragraphs 173 and 174, the Commission discusses the issue of the necessity of sub-loop unbundling, its technical feasibility and alternatives. CBT would state that the issue of technical feasibility for subloop unbundling must be determined on a case-by-case basis. There are certain remote terminals that are not constrained by physical limitations and could, with additional construction expense, be modified to support subloop unbundling. Other remote terminals, however, are so constrained in how they are constructed that physical space limitations prohibit subloop unbundling. In cases where subloop unbundling is possible, it should be the responsibility of the party seeking access to subloop elements to bear the cost of any necessary network modifications and the responsibility of assuring that network reliability is not jeopardized by any changes made.

The Commission also seeks comment whether, when subloop unbundling is not technically feasible or there is insufficient space, the ILEC should provide alternative methods to subloop unbundling "at no greater cost to the competitive LEC." CBT believes that the spirit and intent of the Act require that costs be borne by the cost causer. In this case, the specific cost causer would be the CLEC or CLECs that desired access to an equivalent subloop functionality at a specific point in the network. The costs

necessary to modify the network to meet the CLEC requirements should be borne by the CLEC, not by the incumbent telecommunications provider or its customers. Such an arrangement would render CLECs unaccountable for the direct costs and risks associated with their network activities.

In paragraph 175, the Commission addresses the issue of access to remote terminal locations. CBT supports the Commission's position that "first come, first served" is the most appropriate means of allocating scarce remote terminal space. Further, if an expansion of space is technically feasible, CBT would not be opposed to expanding the space so long as the costs were borne by the parties seeking access and rules and guidelines, such as those existing under existing collocation arrangements, were adopted and applied in order to assure physical and network security (paragraph 176) at the site. There are network reliability concerns associated with providing multiple party access to feeder distribution interfaces because such equipment has historically been designed with a fixed number of openings. Accommodating access by a CLEC may require field modification of the structures and should only be done in a manner that would assure the same network reliability. For example, adding an opening to an existing cabinet may create weatherproofing problems and could void manufacturers' warranties on equipment. This type of work would have to be done in accordance with appropriate quality standards to prevent degradation or interruption of service to existing customers.

IX. UNBUNDLING AND RESALE OBLIGATIONS UNDER §§ 251(c)(3) and 251(c)(4)

In its discussion of Unbundling Obligations in paragraphs 180 through 184, the Commission seeks comment on the type and nature of network unbundling which should

be required in order that the deployment of new services is not impaired. CBT believes existing unbundling rules are sufficient to address this issue. In response to paragraph 181, CBT believes that the Commission should consider the additional criteria of whether a given network element was used for the provision of telephone exchange service at the time of enactment of the 1996 Act. With respect to new network elements that will be used to deploy advanced services, ILECs and CLECs stand on the same footing and are equally able to install equipment necessary to provision advanced services such as xDSL. Having access to unbundled loops, including loops conditioned to receive xDSL equipment, CLECs are in the position to develop their own new services and deploy them without having to rely further upon ILECs. Similarly, the ILECs should be free to deploy their own advanced services without the threat that anything they do should be made available to CLECs at cost or on a wholesale basis.

The marketplace must be allowed to work. CLECs compete against one another without obligations to share facilities or equipment. With respect to new services that were not traditionally provided, ILECs should also be allowed to compete on an even footing with CLECs. Constant and new regulation is neither necessary nor warranted. Today, competitors already have access to loops capable of providing advanced telecommunications services in the same manner as ILECs provide to themselves. CBT has already negotiated loop types that support HDSL and, when applicable to the negotiation process, will be willing to negotiate an ADSL compatible loop type as well. In terms of other network elements, there is simply no need to unbundle them. Competitors have the ability today to collocate in CBT's central offices, install DSLAMs, and transport the traffic to their own networks. In this regard, CBT has no increased

ability or advantage inasmuch as ADSL is an emerging technology available to all on a nondiscriminatory basis.

In paragraph 184, the Commission seeks comment on specific regulatory relief that it should provide to ILECs to encourage them to provide advanced services. CBT urges the Commission to reconsider its decisions on the various applications for forbearance under § 706 of the Act, as the relief sought therein would provide significant encouragement to ILECs to deploy advanced services. There is a clear opportunity for the Commission to distinguish between network elements and services that were provided before the Act and those that are added in the future. For such new elements and services, there is no reason to handicap the ILECs. To encourage true competition, the ILECs and CLECs should be free to compete for new services on an equal basis. The obligations to unbundle new equipment that CLECs could obtain for themselves, or to resell new services that CLECs could provision for themselves, create economic disincentives for ILECs to invest in new equipment and services. This deters innovation and slows the deployment of advanced services to the public, contrary to Congress' stated goals in § 706. CBT would strongly recommend that the Commission consider such an approach as a meaningful <u>de</u>regulatory step towards creating real (not artificially induced) competition.

In paragraph 189, the Commission tentatively concluded that advanced telecommunications services, because they were offered primarily to end-user retail customers, "fall within the core category of retail services that both Congress and the Commission deemed subject to the resale obligation . . . ." CBT does not dispute that advanced telecommunications services will be offered to retail customers. However,

CBT would note that § 706 of the Act requires the Commission to "encourage the deployment on a reasonable and timely basis advanced telecommunications capability to all Americans." The Commission is to use various measures, including regulatory forbearance, to encourage the development of advanced telecommunications capability. As discussed elsewhere in these comments, if the Commission requires resale of advanced telecommunications services, its actions would serve to discourage the deployment of these services.

CBT also reminds the Commission that it has decided to exempt enhanced service providers from paying access charges to LECs for the use of the local network. In order to encourage development of the Internet, the Commission has relieved them from the burden of paying access charges, a decision that has substantial adverse economic impact on local telephone companies who must provide additional facilities to handle this traffic without being compensated for it. At the same time, many states have determined that traffic destined to Internet providers is "local" traffic for purposes of paying compensation under interconnection agreements. Many CLECs are taking advantage of this by encouraging Internet providers to relocate on CLEC networks, providing a lucrative source of income to CLECs at the expense of ILECs. If the Commission now requires ILECs to resell advanced services, whose most significant usage would be to access the Internet, ILECs will once again bear the brunt of the cost of making Internet access widely available. At some point, some other industry group has to pay its fair share. Suspension of resale of advanced services would be an appropriate starting point.

Rules for unbundling and resale should not be applied to advanced telecommunications services. Rather, the forces of a competitive market must be allowed

to work. If the rules on unbundling and resale are applied to advanced services, it will drastically decrease the incentive for ILEC's to invest in network improvements necessary to provide these emerging, state of the art services. ILECs' competitors would be able to take advantage of the ILEC's initiative and innovation without the risk associated with introducing a new technology, and at prices that would prohibit the ILEC from fully recovering its investment. CBT does not contest the fact that unbundling and resale of preexisting UNEs and telecommunications services would still be required. However, as noted above, with the UNEs that are now available from ILECs (e.g., local loops, collocation space and dedicated transport), competitors are free to purchase these existing UNEs and install the additional equipment necessary for advanced services and assume the necessary market risk themselves. With the availability of these UNEs, ILECs do not control any essential facilities necessary to provide services, such as xDSL, and should not be burdened with the additional unbundling and resale obligations for xDSL infrastructure and service that otherwise would be imposed on its existing telephone business.

CBT recommends that the Commission use its forbearance authority, as encouraged by § 706, to limit application of the unbundling and resale rules to traditional circuit switched networks. Competitors invest in new technologies and facilities in order to differentiate themselves. Regulations that artificially impair the ability of a competitor to earn an economic return on such investments artificially cause the competitors not to invest in those facilities. Economics driven by the marketplace is a better innovator than any regulation attempting to stimulate artificial competition. Forcing one company to share the benefits of its innovation with others, who do not share the same risks as the

innovator, causes that company not to take the same risks that it may otherwise have assumed. It does not make economic sense to build a brand new data network and assume all of the associated costs of doing so if the company would be required to make that network available to its competitors at only its forward looking costs. For a new investment to be rational, the firm should expect to be able to recover its investment plus an opportunity to earn a reasonable return on its investment.

To require ILECs to resell new services at a discount would further erode the incentives to launch a new service. If discounted resale were required, competitors could offer exactly the same services at lower rates, with none of the risk that the service would turn out to be unprofitable. Allowing resale provides no incentive to invest in new advanced data technologies. A reseller makes no investment in infrastructure and can walk away from selling a service at any time. However, the party that builds the network does not have the luxury of walking away from it without suffering a significant financial loss. All competitors should have the same incentives (and risks) to innovate without artificial regulatory incentives that allow gaming of the market.

CBT believes the public interest would be better served by Commission forbearance than by enforcement of § 251 (c) and (d) with respect to advanced services. For example, if competitive providers were not able to leverage ILEC investments in advanced data networks, CLECs would invest their own resources in such facilities, thereby making a far wider range and variety of facilities and services available for public use at competitive prices which only an unregulated and independent marketplace can produce. CBT also believes this would result in an increase in the broadband capacity which is being demanded by its customers, a more competitive market resulting in

increased customer choice and lower prices, as well as greater productivity and increased economic development for its customers.

CBT is not alone in its belief that an unregulated and independent marketplace is the most efficient means to promote the deployment of new, advanced services. Commission Chairman William E. Kennard, in his speech to the Personal Communication Industry Association of America on September 23, 1998, stated that the "relationship between industry and government must be firmly grounded in common sense". He further explained:

> I want to bring more common sense to the ways that we work together – industry and government. From my perspective, this means that we in government must have the humility to trust in the marketplace. And I believe that industry should respect this limited role for government. Industry must recognize that government's role is not to confer regulatory advantage, or guarantee anyone success, but rather, to strive only to afford everyone an opportunity – an opportunity to win or lose in the marketplace.

CONCLUSION

The 1996 Act has established the groundwork for a competitive marketplace and made it possible for new entrants to operate alongside long established local exchange carriers. Given this foundation, the Commission needs to let the marketplace work for new advanced telecommunications capabilities. The separate affiliate requirement is unnecessary over-regulation, a barrier to deployment, and an inefficient use of valuable resources. Existing interconnection, unbundling, collocation, and resale requirements, as established by the Commission, are working and will be sufficient to allow all new entrants to competitively offer advanced telecommunications services. New regulations are unnecessary for the deployment of advanced services to be successful.

Respectfully submitted,

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